IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

Crl.Rev.Pet.No. 2270 of 2006(C)

CRA.466/2005 of ADDL.SESSIONS JUDGE(ADHOC-II), ERNAKULAM
CC.1973/2003 of JUDL.MAGISTRATE OF FIRST CLASS-I, ALUVA

.....

REVN. PETITIONER:

IBRAHIM, S/O.KUNJU MOHAMMED,
AGED 45 YEARS, RESIDING AT THIDALIL(H),
NEAR PANDIPPUZHA CHURCH,
THURUTH, CHENGAMANAD VILLAGE

BY ADV. SRI.V.S.CHANDRASEKHARAN
SRI.K.P.ABDUL RASSAK
SRI.K.K.NAZEER

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM
REPRESENTING SUB INSPECTOR OF POLICE,
ALUVA.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2270 OF 2006 C

Dated this the 27th day of September, 2007

O R D E R

The revision petitioner who was the first acused in C.C.No.1973/03 on the file of the JFCM-I, Aluva challenges the conviction entered and the sentence passed against him concurrently by the courts below for offences punishable under sections 143, 147, 148 and 332 read with section 149 IPC and section 3(1)(a) of the Prevention of Damage to Public Properties Act, 1984.

2. The case of the prosecution can be summarized as follows:-

On 1.4.92 at about 10.15 a.m. about 50 persons including the five accused persons on the Aluva Bye-pass which is a national highway formed themselves into an unlawful assembly armed with deadly weapons like stones and in prosecution of the common object of the said assembly and with the intention of deterring the police from discharging their duty, pelted stones causing injuries to police men and damage to police jeep to the tune of Rs.1,200/-. The accused have thereby committed offences

punishable under sections 143, 147, 148 and 332 read with section 149 IPC and section 3(1)(a) of the PDPP Act.

3. Out of the 5 accused persons, A2, A4 and A5 were absconding. A1 and A3 alone stood trial. On their pleading not guilty to the charge framed against them by the trial court for the aforesaid offences the prosecution was permitted to adduce evidence in support of their case. The prosecution altogether examined 15 witnesses as PWs 1 to 15 and got marked 15 documents as Ext.P1 to P15 and two material objects as MOs 1 and 2.

4. After the close of the prosecution evidence, A1 and A3 were examined under section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against them in the evidence for the prosecution. They denied those circumstances and maintained their innocence. They did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate after trial, as per judgment dated 315/05 found A1(revision petitioner) and A3 not guilty of the offence punishable under sections 332 IPC but convicted them of offences punishable under sections 143, 147 and 148 read with

section 149 IPC and section 3(1)(a) of the PDPP Act. For the conviction under section 148 IPC and section 3(1)(a) of the PDPP Act A1 and A3 were each sentenced to rigorous imprisonment for six months. The trial court also imposed a fine of Rs.1,200/- for the conviction under section 3(1)(a) of the PDPP Act and on default to pay the fine, to suffer a further imprisonment for one month each. On appeal preferred by the revision petitioner(A1) as Crl.Appeal No.466/05 before the Sessions Court, Ernakulam, the Additional Sessions Judge(Adhoc-II) as per judgment dated 31.5.06 confirmed the conviction entered and the sentence passed against the revision petitioner. Hence this revision.

6. I heard the learned counsel for the revision petitioner as well as the learned Public Prosecutor.

7. After hearing both sides and after perusing the records, I am not satisfied that the prosecution has succeeded in bringing home the guilt of the revision petitioner(A1) beyond reasonable doubt. Going by the prosecution case, about 50 persons armed with stones attacked the police party at about 10.15 a.m. on 1.4.92. Out of them, five alone were charge-sheeted. Even among those five, two alone(A1 and A3) faced trial

and the others were absconding. PWs 1, 2 and 4 to 8 are the police constables who figured as the eye witnesses and PWs 9 to 12 are the independent witnesses who were examined as occular witnesses. Out of them, the independent witnesses(PWs 9 to 12) turned hostile to the prosecution. Even among PWs 1, 2 and 4 to 8, PWs 4 and 5 alone identified the revision petitioner(A1) in court. The rest of the police constables could not identify A1. PW6 who is a police constable would say that he was unable to identify the culprits in just a glance. This means that PW6 could only have a fleeting glimpse of the assailants. Admittedly, none of the assailants was arrested from the spot. The name of the revision petitioner(A1) also does not figure in the FIR. Both PWs 4 and 5 who are the only witnesses who identified A1 in court confessed that they did not have any previous acquaintance with A1. They also could not apprehend A1 from the spot. These witnesses identified A1 for the first time in court only on 22.8.05 when PW4 was examined and on 9.11.1995 when PW5 was examined. Admittedly, no test identification parade has been conducted in this case. Hence the dock identification of the revision petitioner by PWs 4 and 5 for the first time in court is absolutely valueless.

See ***Kanan Vs. State of Kerala*** [AIR 1979 SC 1127] and ***Harinath Vs. State of U.P.*** [AIR 1988 SC 345]. When the prosecution evidence with regard to identification of A1 is not at all helpful, the conviction recorded and the sentence passed against A1 overlooking the above vital aspects of the matter cannot be sustained and is accordingly dislodged. The revision petitioner (A1) is accordingly found not guilty of the offences punishable under sections 143, 147 and 148 read with section 149 and section 3(1)(a) of the PDPP Act and is acquitted thereunder. He shall be set at liberty forthwith.

In the result, this revision is allowed and the conviction entered and the sentence passed against the revision petitioner are set aside as above.

(V. RAMKUMAR, JUDGE)

aks